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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th February 2010

No. 991—li/1(BH)-5/2006-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th November 2009 in Industrial Dispute Case No. 15 of 2007 of the Presiding Officer, Labour Court, Sambalpur to whom the Industrial dispute between the management of M/s Angul United Central Co-operative Bank Limited, Angul, Dist. Angul and their Workman Shri Hara Mohan Mohanty was referred to for adjudication is hereby published as in the Scheduled below.

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No.15 OF 2007

Dated the 30th November 2009

Present :

Miss Sarojini Mahapatra, M.A., LL.B.
Presiding Officer, Labour Court
Sambalpur.

Between :

The Management of .. First Party—Management
M/s Angul United Central
Co-operative Bank Limited
Angul, Dist. Angul.

And

Their Workman .. Second Party—Workman
Shri Hara Mohan Mohanty
S/o Late Jiginath Mohanty
At/P. O. Jarapada
Dist. Angul.

Appearances :

For the First Party—Management . . . Shri M. P. Rout,
Authorised Representative.

For the Second Party—Workman . . . Self.

AWARD

This matter arises out of a reference made by the Government of Orissa, Labour & Employment Department under sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 in their memo No. 7269(5), dated the 2nd June 2007 for adjudication of the following questions :—

“Whether the dismissal of Shri Hara Mohan Mohanty, Ex-Cadre Secretary by the Management of M/s Angul United Central Co-operative Bank Limited with effect from the 27th March 2003 is legal and/or justified ? If not, to what relief the workman is entitled ?”

2. As per the case of the workman, the workman was appointed as a Cadre Secretary by the President, Angul United Central Co-operative Bank Limited, Angul till the date of his illegal dismissal, i. e. on the 27th March 2003. Although the workman has never committed any misappropriation but the Enquiry Officer without giving any reasonable opportunity, has arbitrarily given finding that all the charges levelled against the workman are fully established. The management employer has not considered the representations of the workman, dated the 6th July 1998, the 14th December 1998, the 26th November 2001, the 18th January 2003, the 26th March 2003, the 4th March 2003 and also his affidavit, dated the 8th June 1998. The order of dismissal is illegal as the show cause of the workman has not at all been considered by the management before such penalty of grave nature was imposed. In spite of repeated requests of the workman, the management employer, i. e. Bank Authority has not considered to allow time till completion of audit for the period of incumbency of this workman as a Secretary of Badasada Service Co-operative Society. The workman rendered service near about 20 years in this Department and prior to 1996, there was no allegation of any misappropriation or audit recoveries against him.

While the workman was undergoing treatment due to road accident, the Bank Authorities seized the records and properties of Badasada Service Co-operative Society by breaking open the lock without intimating the President of Badasada Service Co-operative Society and the workman. The workman was on leave for his treatment. The vouchers and other properties were replaced intentionally to drag this workman into litigation. The dismissal of the workman is illegal, misconceived, unjustified and baseless as the Enquiry Officer has not given any reasonable opportunity to the workman and as prepared the Enquiry Report fraudulently behind the back of the workman. So the workman prayed that he is entitled to be reinstated as Cadre Secretary by the Angul United Central Co-operative Bank Limited from the date of his dismissal along with financial and other consequential benefits.

3. The management's case stated as follows :—

The workman was posted in Badasada Service Co-operative Society as the Secretary. During the tenure of his service at the said Society, the workman has committed breach of trust, misappropriations and mismanaged the Society. So he was chargesheeted vide chargesheet No. 64, dated the 14th July 1998 for misappropriation of funds, manipulation of records, illegal expenditure without voucher, action detrimental to the interest of the Society and unauthorised dealing, shifting of Society records. The workman was called for explanation but he did not file any explanation till the end of personal hearing. A domestic enquiry was entrusted to Shri Keshab Chandra Khatua, Gr. II Officer of the Bank to enquire into the charges. The Enquiry Officer has given due notice to the workman to appear the enquiry. The workman did not attend any date of enquiry nor made any correspondence regarding his non-appearance. Moreover, the workman has not filed any counter to the charges before the Enquiry Officer. The workman was supplied the copy of the Enquiry Report on the 24th May 1999. The workman has not filed any counter to the charges of Enquiry Report. On the 18th January 2003 at the time of personal hearing, the workman requested to supply the copy of Enquiry Report.

4. Further it is alleged from the case of the management that the record and property of Badasada Service Co-operative Society were seized and recovered under the Provision of Law in presence of Magistrate, Police Officer of local P. S. and public witness by the authorities. The Assistant Registrar of the Co-operative Society, Talcher Circle, Talcher ordered an enquiry u/s 65 of the O. C. S. Act, 1962 on the issue of alleged misappropriation, manipulation of records and irregularities. The workman has misappropriated the amount of Rs. 2,16,594. Further the Statutory Auditor of Badasada S. C. S. while conducting the audit u/s 62 of O. C. S. Act found an amount of Rs. 2,84,905. 17 has been misappropriated by the workman Shri Hara Mohan Mohanty. The Assistant Auditor General of Co-operative Societies, Dhenkanal initiated a surcharge proceeding u/s 67 and held the workman is liable for misappropriation of money of Rs. 2,61,528. 55 paise. So the management prayed that the workman ought to be dismissed.

5. The workman has filed rejoinder. As per his rejoinder, the dispute is maintainable under the Provision of Payment of Gratuity Act, 1972 and Industrial Disputes Act, 1947. The workman was the cadre employee of the Angul United Central Co-operative Bank Limited, Angul and not by the Badasada Service Co-operative Society. The workman has been communicated the dismissal order under order of the President. Due to *mala fide* intention, the workman was placed under suspension vide Order No. 950, dated the 14th October 2000 by a Branch Manager after giving some percentage out of his suspension allowance. Thereafter, he was under service vide Order No. 1607, dated the 14th May 2002. The management has not taken any steps to settle his retirement benefit, i.e. Gratuity and P. E. D. as per the decision taken vide Resolution No. 5(a), dated the 11th December 1998 of the Cadre Committee. The workman handed over complete charge of Badasada Service Co-operative Society but some delay was made due to health ground. There is no order issued by the Competent Authority as per the provision of the O. C. S. Act, 1962 under Section 68 towards the audit recovery since last 8 years which is the established provision of the Co-operative Societies Act for recovery of loan and audit. It is further alleged that without any intimation to the workman, a cash of Rs. 1,000 was deducted from his salary per month for a pretty long period but the workman does not know the present balance audit recovery.

6. In view of the rival pleadings of the parties, the following issues have been framed in this case for adjudication :—

ISSUES

- “(i) Whether the domestic enquiry conducted by the management is fair and proper ?
- (ii) Whether the dismissal of Shri Hara Mohan Mohanty, Ex-Cadre Secretary by the management of M/s Angul United Central Co-operative Bank Limited with effect from the 27th March 2003 is legal and/or justified ?
- (iii) If not, to what relief the workman is entitled ?”

7. The management has examined two witnesses to prove its case. M. W. 1 Rasananda Pradhan, Legal Officer of the management, M. W. 2 Sankarsan Dhal, Branch Manager of Angul United Central Co-operative Bank, Hindol Branch.

The workman has examined two witnesses including himself. W. W. 1 Hara Mohan Mohanty, workman himself and W. W. 2 Brajabandhu Nath, the Secretary of Service Co-operative Society.

FINDINGS

8. *Issue No. (i)* — With the consent of the parties, the fairness of the domestic enquiry [Issue No.(i)] was taken up as a preliminary issue and after recording evidence in that regard the same was answered in support of the management and against the workman vide order, dated the 5th October 2009. Thereafter both the parties are allowed to adduce further evidence in relation to the quantum of punishment but both the parties declined to adduce further evidence. As per law, the award of punishment is left entirely to the discretion of the punishing authority. But it must be shockingly disproportionate. It is well settled law that award of punishment must not be mechanical act of the authority, but it must be based on the objective assessment of facts.

Accordingly Issue No. (i) was answered.

9. *Issue Nos. (ii) and (iii)* — For better appreciation and adjudication of dispute under reference, both the above issues are taken up together. Admittedly, the workman Hara Mohan Mohanty was serving as the Secretary of Badasada Service Co-operative Society. Before going to any findings, the evidence of both the parties as well as their respective documents should be scrutinising in a careful manner. As per the evidence of M. W. 1, the workman misappropriated the money of the Society and then fled away locking the Society Office. As per the order of the Assistant Registrar of Co-operative Societies of Talcher, the Society Office was opened in presence of Magistrate and Police. Thereafter an enquiry was taken in consonance with the Orissa Co-operative Society Act. The workman was allowed to participate in it. Further, M. W. 1 stated that during the enquiry it came to light that the workman has misappropriated the Society's money, then a chargesheet was filed against him. The workman had taken many items of the Society to his house. Further, it is alleged that Shri Keshab Chandra Khatua was appointed as an Enquiry Officer and in that enquiry, the workman did not participate in spite of service of notice on him. However, a personal hearing was conducted and the workman appeared without filing show cause. The Enquiry Report

was handed over to the workman. It is further alleged that the first personal hearing was conducted by the Collector who was Management-in-charge in the Bank. The second personal hearing was conducted by the President of the Bank along with the Secretary of it. Admittedly, the workman was given offer to deposit half of the amount misappropriated by him with a further offer to consider his continuance in service in case of the deposit of the same. It is clear from his cross-examination that prior to the audit report and consonance with the report of the Assistant Registrar, an amount of Rs. 1,000 was deducted from the salary of the workman in each month but there was no communication issued to the workman pertaining to the deduction. M. W. 1 has no knowledge or idea, if the Assistant Registrar prior to the order passed by him to break open the Society Office had issued intimation to the workman or to the President of the Society. As alleged from his evidence after the break open of the Society Office, the workman handed over some registers of the Society which were in his house.

10. The management has filed some documents Exts. 1 to Ext. 41 in support of his case. Ext. 5 is the xerox copy of the undertaking by the workman Hara Mohan Mohanty discloses that if he involved in any misappropriation with Badasada S. C. S. it will be deducted by any authority in the Bank in future, he will be personally held responsible and agreed to pay the same, failing which action as deemed proper should be taken against him. As per Ext. 31, the management intimated the workman to deposit the misappropriation amount of Rs. 5,25,443 only in the Society account at Pallahara Branch, the Angul United Central Co-operative Bank Limited, Angul both the principal and interest within seven days from receipt of the letter. Ext. 31 further discloses that Hara Mohan Mohanty is liable to pay amounting to Rs. 3,08,849 and Rs. 2,16,594 (as interest) due to the irregular transaction made by the workman. In the instant case, M. W. 1 stated in his evidence that during the course of audit, the workman was found to have misappropriated the amount of Rs. 2,84,905. 17 paise towards principal with interest @ 12 % per annum.

11. M. W. 2, the Branch Manager of Angul United Central Co-operative Bank Limited, Hindol Branch stated that when he was working as a Group Officer of Cadre establishment of the management, the workman had been to the Head Office with some registers and voluntarily presented these registers there. Being directed by the Secretary, M. W. 2 has received those registers and other properties from the workman. So there is discrepancy in the evidence of M. W. 1 and M. W. 2 so far as the allegation regarding shifting registers and other properties of the management by the workman is concerned. In this respect, the workman W. W. 1 stated in his evidence that he was dismissed from service illegally. He was not given ample opportunity at the time of enquiry although he has filed the show cause and made personal appearance before the Enquiry Officer. Admittedly, the workman has taken some registers to his house to get pending works complied during night hours. He had brought some registers to his house and due to accident, he could not return the same. The President of the management without intimating him broke open the lock of the Society. However it is alleged from the evidence of M. W. 2, that he had received all the registers from the workman. Admittedly, the workman was bedridden as he was suffering from leg fracture due to accident. In this respect, the workman intimated in writing to the management. However, though the management had presented F. I. R. against the workman but the local police did not take any action against the workman. The workman has filed xerox copy of some documents which are marked Exts. A to J. Ext. A is the xerox copy of application, dated the 11th September

1998. Ext. B is the xerox copy of show cause. Ext. C is the xerox copy of the application, dated the 14th December 1998. Ext. D is the xerox copy of written statement on show cause of management. Ext. E is the xerox copy of application. Ext. F is the xerox copy of personal grievance filed by the workman. Ext. G is the xerox copy of the application. Ext. H is the xerox copy of prescription. Ext. J is the copy of the receipt of the postal department. W. W. 2 Brajabandhu Nath, the Secretary of the Service Co-operative Society as alleged had not participated in the enquiry in any manner. He was not present at the time of personal hearing of the workman.

12. Admittedly, on the 26th July 2003, the workman Hara Mohan Mohanty, Ex-Cadre Employee of M/s Angul United Central Co-operative Bank Limited, Angul filed a complain petition before the Assistant Labour Commissioner alleging illegal dismissal from his service by the management of M/s Angul United Central Co-operative Bank Limited, Angul. Admittedly, on the 16th January 1996, the workman Hara Mohan Mohanty while working as Secretary of Badasada Service Co-operative Society, he was suspended from service for allegation of misappropriation. On the 20th May 1998 during the pendency of enquiry, he was again reinstated in his service and posted as Secretary in the Head Office, Angul with a condition to repay the amount of misappropriation, if found by audit report. Then the workman was transferred to Gaundia Branch, Dist. Dhenkanal on the 11th July 1998. On the 3rd October 2000, while the workman was working again he was suspended due to charge of illegal unauthorised absence. On the 14th May 2002, then the workman was again reinstated in his service in Chhendipada Branch. On the 27th March 2003 while the workman was working, he received the order of dismissal on the 27th March 2003 on the ground of alleged misappropriation of funds. As per the case of the management, the workman was chargesheeted for alleged gross misconduct of misappropriation of Rs. 3,08,849. He was initially put under suspension and again reinstated in service and transferred to the other Branch. It is alleged from the evidence on record as well as documents that the management suspended the workman since the date the 16th October 1996 for allegation of misappropriation while the workman was working as a Secretary of Badasada Service Co-operative Society. In the year 1998, he was reinstated by the management. In this way for twice or thrice, the workman was suspended and reinstated in service in the same Cadre but there is no reason assigned by the management why the management has reinstated the workman although he has misappropriated money of the Society. The management has also not given any clear assessment of deduction of the amount from the salary of the workman although Rs. 1000 was deducted by the management from the salary of the workman. More over, it is clear from the evidence of M.W. 1 that the cash of Rs. 1,000 has been deducted from the salary of the workman without any intimation to him. Admittedly, the workman was suffering from illness due to accident and he has intimated to the management in writing. It is the settled principle of law that the management can never deduct any amount from the salary of the workman without any intimation to him in any manner. It is a fact that the workman was getting salary towards his service for the management. So the management had deducted cash of Rs. 1,000 from the salary of the workman for how many months and years has not been cleared by the management which is illegal. The management should have deducted cash of Rs. 1,000 from the salary of the workman towards misappropriation of money of the Society to the intimation of the workman. But in the case in hand, the management has illegally deducted money from the salary of the workman without intimating him.

13. So from the above facts and circumstances, it can safely be held that the steps taken by the management against the workman is grievous in nature.

14. Now the question is whether the workman should be allowed back wages in this case. It may be stated that the workman has in fact, not rendered any service during that period. Accordingly, the issues are answered. Hence the following Award :—

AWARD

The reference is awarded on contest against the management but in the circumstance without cost. The dismissal of Shri Hara Mohan Mohanty, Ex-Cadre Secretary by the management of M/s Angul United Central Co-operative Bank Limited with effect from the 27th March 2003 is illegal. The management is directed to reinstate the workman in his post within three months hence from the date of publication of this Award in the Orissa Gazette. The workman shall not get any back wages in this case.

Dictated and corrected by me.

SAROJINI MAHAPATRA
30-11-2009
Presiding Officer
Labour Court, Sambalpur

SAROJINI MAHAPATRA
30-11-2009
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
K. C. BASKE
Under-Secretary to Government